

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

MARK B. WELLER,

Plaintiff,

v.

ROWE DEMING & ROTHMAN LLC,  
an Oregon limited liability company,

Defendant.

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**Case No. 3:19-cv-1632**

**COMPLAINT**

Liquidated Damages (29 USC §216(b))

Statutory Penalty (ORS 652.150)

Retaliatory Discharge (29 USC §216(b))

**JURY TRIAL DEMANDED**

Plaintiff alleges:

**GENERAL ALLEGATIONS**

1.

At all material times herein, Defendant Rowe Deming & Rothman LLC (hereinafter “Defendant”) was and is a limited liability company, incorporated within the State of Oregon, and conducting regular and sustained business activity in Wasco County, Oregon.

2.

At all material times herein, Defendant was an employer subject to the requirement of the Fair Labor Standards Act, 29 USC §§201, et seq., to pay overtime premium pay to its

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1 non-exempt employees, for all hours worked over 40 in any given workweek, at 1.5 times  
2 the employee's regular rate of pay.

3 3.

4 At all material times herein, Plaintiff Mark B. Weller (hereinafter "Plaintiff") was  
5 employed by Defendant as a non-exempt tax preparer, from January 2, 2018 until  
6 discharge from employment effective February 7, 2018, at the regular pay rate of \$28.85  
7 per hour.

8 4.

9 While employed by Defendant, Plaintiff worked 10.6 overtime hours for which he was  
10 not paid \$458.77 earned overtime wages until August 23, 2019, despite giving written  
11 notice of the unpaid wages to Defendant on June 28, 2019.

12 **FIRST CLAIM FOR RELIEF**  
13 **(Liquidated Damages – 29 USC §216(b))**

14 5.

15 Plaintiff is owed liquidated damages in the amount of \$458.77 as compensatory damages  
16 for late-paid overtime wages, pursuant to 29 USC 216(b).  
17  
18

19 6.

20 Plaintiff is entitled to an award of reasonable attorney fees, pursuant to 29 USC 216(b).  
21

22 7.

23  
24 The Court has original jurisdiction over this claim, pursuant to USC §1331.  
25

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**SECOND CLAIM FOR RELIEF**  
**(Statutory Penalty Wages – ORS 652.150)**

8.

Plaintiff is entitled to statutory penalty wages in the amount of \$6,924, together with prejudgment interest thereon at the legal rate of 9% per annum, from March 10, 2018 until final judgment is entered herein, pursuant to ORS 652.150, for Defendant's failure to pay plaintiff all earned wages in a timely manner following termination of employment as required by ORS 652.140.

9.

Plaintiff is entitled to an award of reasonable attorney fees pursuant to ORS 652.200(2).

10.

The Court has supplemental federal jurisdiction over this claim, pursuant to USC §1367(a).

**THIRD CLAIM FOR RELIEF**  
**(Retaliatory Discharge – 29 USC §216(b))**

11.

Defendant discharged Plaintiff from employment in violation of 29 USC §216(b), and in retaliation for Plaintiff having repeatedly complained to management that he had been misclassified as exempt, and was not being paid overtime wages as required by law.

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1 12.

2 As a direct result of his illegal discharge from employment, Plaintiff seeks economic  
3 damages in the form of 2-years' lost wages totaling \$120,000, plus an equal additional  
4 amount as liquidated damages, per 29 USC §216(b).

5 13.

6 As a direct result of his illegal discharge from employment, Plaintiff seeks non-economic  
7 damages for mental and emotional distress and suffering in the amount \$75,000, per 29  
8 USC §216(b).

9 14.

10 Defendant's actions in discharging Plaintiff from employment were malicious,  
11 oppressive, and in reckless disregard of Plaintiff's legal rights. Plaintiff therefore seeks  
12 punitive damages in the amount \$150,000, per 29 USC §216(b).

13 15.

14 Plaintiff is entitled to an award of reasonable attorney fees, per 29 USC 216(b).

15  
16 16.

17  
18 The Court has original jurisdiction over this claim, pursuant to USC §1331.

19  
20 \* \* \* \* \*

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22 ///

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WHEREFORE, Plaintiff Mark B. Weller hereby prays for a Judgment against Defendant Rowe Deming & Rothman LLC as follows:

**1. First Claim for Relief (Liquidated Damages - 29 USC §216(b)):**

For liquidated damages in the amount of \$458.77.

**2. Second Claim for Relief (Statutory Penalty Wages – ORS 652.150):**

(a) For statutory penalty wages per ORS 652.150, in the amount of \$6,924, plus prejudgment interest thereon at the legal rate of 9% per annum from March 10, 2018 until final judgment is entered herein; and

(b) For reasonable attorney fees, pursuant to ORS 652.200(2).

**3. Third Claim for Relief (Retaliatory Discharge - 29 USC §216(b)):**

(a) For economic damages in the amount of \$120,000;

(b) For non-economic damages in the amount of \$75,000; and

(c) For punitive damages in the amount of \$150,000.

4. For costs and disbursements incurred herein.

DATED this 10th day of October, 2019.

*Brian A. Buchanan*

Brian A. Buchanan, OSB #922434

Attorney for Plaintiff Mark B. Weller